



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 403

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 1331

RIN 0985-AA11

State Health Insurance Assistance Program (SHIP)

AGENCY: Administration for Community Living (ACL), Department of Health and Human Services (HHS) and Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Interim final rule.

SUMMARY: This rule implements a provision enacted by the Consolidated Appropriations Act of 2014 and reflects the transfer of the State Health Insurance Assistance Program (SHIP) from the Centers for Medicare & Medicaid Services (CMS), in the Department of Health and Human Services (HHS) to the Administration for Community Living (ACL) in HHS. The previous regulations were issued by CMS under the authority granted by the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), Section 4360.

DATES: *Effective date:* This interim final rule is effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Comment date: To be assured of consideration, comments must be received by ACL electronically through www.regulations.gov no later than midnight Eastern Standard Time (E.S.T.) on **[INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments in one of following ways (no duplicates, please):

Written comments may be submitted through any of the methods specified below. Please do not submit duplicate comments.

- Federal eRulemaking Portal: You may (and we encourage you to) submit electronic comments on this regulation at <http://www.regulations.gov>. Follow the instructions under the “submit a comment” tab. Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.
- Regular, Express, or Overnight Mail: You may mail written comments to the following address ONLY: Administration for Community Living, Attention: SHIP Interim Rule, U.S. Department of Health and Human Services, Washington, DC 20201. Please allow sufficient time for mailed comments to be received before the close of the comment period.
- Individuals with a Disability: We will provide an appropriate accommodation, including alternative formats, upon request. To make such a request, please contact Marlina Moses-Gaither, (202) 357-3552 (Voice) or at marlina.moses-gaither@acl.hhs.gov.

FOR FURTHER INFORMATION CONTACT: Josh Hodges, Administration for Community Living, telephone (202) 795-7364 (Voice). This is not a toll-free number. This document will be made available in alternative formats upon request. Written correspondence can be sent to Administration for Community Living, U.S. Department of Health and Human Services, 330 C St. SW, Washington, DC 20201.

SUPPLEMENTARY INFORMATION:

I. Background

The State Health Insurance Assistance Program (SHIP) was created under Section 4360 of the Omnibus Budget Reconciliation Act (OBRA) of 1990 (Pub. L. 101-508). This section of the law authorized the Centers for Medicare & Medicaid Services (CMS) to make grants to States to establish and maintain health insurance advisory service programs for Medicare beneficiaries. Grant funds were made available to support information, counseling, and assistance activities relating to Medicare, Medicaid, and other related health insurance options such as: Medicare supplement insurance, long-term care insurance, managed care options, and other health insurance benefit information. In January 2014, authorized in the Consolidated Appropriations Act of 2014, the SHIP program was transferred from CMS to the Administration for Community Living (ACL). This transfer reflects the existing formal and informal collaborations between the SHIP programs and the networks that ACL serves.

II. Transfer of Language and Technical Amendments

In this interim final rule, ACL transfers all provisions of the existing SHIP regulations at 42 CFR part 403 subpart E, §§403.500-403.512, to a new part at 45 CFR 1331.1-1331.7, and 42 CFR part 403 subpart E is reserved. This transfer positions the regulations governing the SHIP program alongside the other ACL regulations, reflecting the transfer of the program to ACL's administration.

In addition, as Congress has transferred the entirety of the SHIP program to ACL, all references to CMS' administration of the program are changed in this rule to ACL.

Finally, as HHS has promulgated new Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards, codified at 45 CFR part 75 since the previous rule's implementation, this rule changes a reference to previous guidance in § 1331.7 Administration.

III. Regulatory Analysis

A. Executive Order 12866

This rule is not being treated as a “significant regulatory action” under section 3(f) of Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget.

B. Regulatory Flexibility Analysis

The Secretary certifies under 5 U.S.C. 605(b), the Regulatory Flexibility Act (Pub. L.96-354), that this regulation will not have a significant economic impact on a substantial number of small entities. The primary impact of this regulation is on entities applying for SHIP funding opportunities, specifically researchers, States, public or private agencies and organizations, institutions of higher education, and Indian tribes and Tribal organizations. The regulation does not have a significant economic impact on these entities.

C. Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR 1320 Appendix A.1) (PRA), ACL and CMS have determined that there are no new collections of information contained in this interim final rule.

D. Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (APA), ACL and CMS are required to publish a notice of proposed rulemaking and provide the public with an opportunity to comment on proposed regulations prior to establishing a final rule unless it is determined for good cause that the notice and comment procedure is impracticable, unnecessary or contrary to public interest. 5 U.S.C. 553(b). As noted previously, Congress has already transferred the SHIP program to ACL under the Consolidated Appropriations Act of 2014. This interim final rule makes no changes other than

aligning the location of the regulations within the Federal Register with other ACL programs; amending the name of the administering agency to ACL; and updating a reference to new Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards, which have already undergone notice and comment rulemaking, therefore, there is good cause under 5 U.S.C. 553(b)(B) for waiving proposed rulemaking as unnecessary.

E. Waiver of Delayed Effective Date

Agencies are required to delay the effective date of their final regulations by 30 days after publication, as required under 5 U.S.C. 553(d), unless an exception under subsection (d) applies. Under 5 U.S.C. 553(d), ACL and CMS may waive the delayed effective date requirement if they find good cause and explain the basis for the waiver in the final rulemaking document or if the regulations grant or recognize an exemption or relieve a restriction.

In the present case, there is good cause to waive the delayed effective date for this interim final rule, because the substance of the regulation, other than the name of the administering agency, is identical to the current regulation.

F. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in expenditures by State, local, or Tribal governments, in the aggregate, or by the private sector, of \$100 million, adjusted for inflation, or more in any one year. ACL and CMS have determined that this rule does not result in the expenditure by State, local, and Tribal government in the aggregate or by the private sector of more than \$100 million in any one year.

G. Congressional Review

This rule is not a major rule as defined in 5 U.S.C. Section 804(2).

H. Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a policy or regulation may affect family well-being. If the agency's conclusion is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. These regulations do not have an impact on family well-being as defined in the legislation.

I. Executive Order 13132

Executive Order 13132 on "federalism" was signed August 4, 1999. The purposes of the Order are: "...to guarantee the division of governmental responsibilities between the national government and the States that was intended by the Framers of the Constitution, to ensure that the principles of federalism established by the Framers guide the executive departments and agencies in the formulation and implementation of policies, and to further the policies of the Unfunded Mandates Reform Act..." Executive Order 13132 applies to actions with federalism implications, which are actions that have substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. For actions that have federalism implications and preempt state law or have federalism implications and impose substantial compliance costs on states and local governments, the agency must consult with state and local officials before publishing the rule and include a federalism statement in the preamble.

The Department certifies that this rule does not have a substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government.

ACL and CMS are not aware of any specific state laws that would be preempted by the adoption of the regulation.

List of Subjects

42 CFR Part 403

Grant programs, health insurance, Medicare, reporting and recordkeeping requirements

45 CFR Part 1331

Grant programs, health insurance, Medicare, reporting and recordkeeping requirements

Dated: December 17, 2015._____

Andrew M. Slavitt,

Acting Administrator,

Centers for Medicare & Medicaid Services

Dated: December 17, 2015._____

Kathy Greenlee,

Administrator,

Administration for Community Living

Approved: January 25, 2016. _____

Sylvia M. Burwell,

Secretary,

U.S. Department of Health and Human Services

Regulatory Text

For the reasons discussed in the preamble, the Centers for Medicare & Medicaid Services, HHS, and Department of Health and Human Services amend title 42, chapter IV and title 45, chapter XIII, subchapter C, of the Code of Federal Regulations, respectively, as follows:

42 CFR Chapter IV

PART 403—SPECIAL PROGRAMS AND PROJECTS

1. The authority citation for part 403 continues to read as follows:

AUTHORITY: 42 U.S.C. 1395b-3 and Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart E [Removed and Reserved]

2. Subpart E, consisting of §§403.500 through 403.512, is removed and reserved.

45 CFR Chapter XIII

3. Part 1331 is added to subchapter C read as follows:

PART 1331 – STATE HEALTH INSURANCE ASSISTANCE PROGRAM

Sec.

1331.1 Basis, scope, and definition.

1331.2 Eligibility for grants.

1331.3 Availability of grants.

1331.4 Number and size of grants.

1331.5 Limitations.

1331.6 Reporting requirements.

1331.7 Administration.

Authority: 42 U.S.C. 1395b-4.

§1331.1 Basis, scope, and definition.

(a) *Basis.* This part implements, in part, the provisions of section 4360 of Pub. L. 101–508 by establishing a minimum level of funding for grants made to States for the purpose of providing information, counseling, and assistance relating to obtaining adequate and appropriate health insurance coverage to individuals eligible to receive benefits under the Medicare program.

(b) *Scope of part.* This part sets forth the following:

(1) Conditions of eligibility for the grant.

(2) Minimum levels of funding for those States qualifying for the grants.

(3) Reporting requirements.

(c) *Definition.* For purposes of this subpart, the term “State” includes (except where otherwise indicated by the context) the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

§ 1331.2 Eligibility for grants.

To be eligible for a grant under this subpart, the State must have an approved Medicare supplemental regulatory program under section 1882 of the Act and submit a timely application to ACL that meets the requirements of—

- (a) Section 4360 of Pub. L. 101–508 (42 USC 1395b-4);
- (b) This subpart; and
- (c) The applicable solicitation for grant applications issued by ACL.

§ 1331.3 Availability of grants.

ACL awards grants to States subject to availability of funds, and if applicable, subject to the satisfactory progress in the State’s project during the preceding grant period. The criteria by which progress is evaluated and the performance standards for determining whether satisfactory progress has been made are specified in the terms and conditions included in the notice of grant award sent to each State. ACL advises each State as to when to make application, what to include in the application, and provides information as to the timing of the grant award and the duration of the grant award. ACL also provides an estimate of the amount of funds that may be available to the State.

§ 1331.4 Number and size of grants.

(a) *General.* For available grant funds, up to and including \$10,000,000, grants will be made to States according to the terms and formula in paragraphs (b) and (c) of this section. For any available grant funds in excess of \$10,000,000, distribution of grants will be at the discretion of ACL, and will be made according to criteria that ACL will communicate to the States via grant solicitation. ACL will provide information to each State as to what must be included in the application for grant funds. ACL awards the following type of grants:

- (1) New program grants.
- (2) Existing program enhancement grants.

(b) *Grant award.* Subject to the availability of funds, each eligible State that submits an acceptable application receives a grant that includes a fixed amount (minimum funding level) and a variable amount.

(1) A fixed portion is awarded to States in the following amounts:

(i) Each of the 50 States, \$75,000.

(ii) The District of Columbia, \$75,000.

(iii) Puerto Rico, \$75,000.

(iv) American Samoa, \$25,000.

(v) Guam, \$25,000.

(vi) The Virgin Islands, \$25,000.

(2) A variable portion which is based on the number and location of Medicare beneficiaries residing in the State is awarded to each State. The variable amount a particular State receives is determined as set forth in paragraph (c) of this section.

(c) *Calculation of variable portion of the grant.* (1) ACL bases the variable portion of the grant on

—

(i) The amount of available funds, and

(ii) A comparison of each State with the average of all of the States (except the State being compared) with respect to three factors that relate to the size of the State's Medicare population and where that population resides.

(2) The factors ACL uses to compare States' Medicare populations comprise separate components of the variable amount. These factors, and the extent to which they each contribute to the variable amount, are as follows:

(i) Approximately 75 percent of the variable amount is based on the number of Medicare beneficiaries living in the State as a percentage of all Medicare beneficiaries nationwide.

(ii) Approximately 10 percent of the variable amount is based on the percentage of the State's total population who are Medicare beneficiaries.

(iii) Approximately 15 percent of the variable amount is based on the percentage of the State's Medicare beneficiaries that reside in rural areas ("rural areas" are defined as all areas not included within a metropolitan Statistical Area).

(3) Based on the foregoing four factors (that is, the amount of available funds and the three comparative factors), ACL determines a variable rate for each participating State for each grant period.

(d) *Submission of revised budget.* A State that receives an amount of grant funds under this subpart that differs from the amount requested in the budget submitted with its application must submit a revised budget to ACL, along with its acceptance of the grant award, which reflects the amount awarded.

§ 1331.5 Limitations.

(a) *Use of grants.* Except as specified in paragraph (b) of this section, and in the terms and conditions in the notice of grant award, a State that receives a grant under this subpart may use the grant for any reasonable expenses for planning, developing, implementing and/or operating the program for which the grant is made as described in the solicitation for application for the grant.

(b) *Maintenance of effort.* A State that receives a grant to supplement an existing program (that is, an existing program enhancement grant)—

(1) Must not use the grant to supplant funds for activities that were conducted immediately preceding the date of the initial award of a grant made under this subpart and funded through other sources (including in-kind contributions).

(2) Must maintain the activities of the program at least at the level that those activities were conducted immediately preceding the initial award of a grant made under this subpart.

§ 1331.6 Reporting requirements.

A State that receives a grant under this subpart must submit at least one annual report to ACL and any additional reports as ACL may prescribe in the notice of grant award. ACL advises the State of the requirements concerning the frequency, timing, and contents of reports in the notice of grant award that it sends to the State.

§ 1331.7 Administration.

(a) *General.* Administration of grants will be in accordance with the provisions of this subpart, 45 CFR part 75 (“Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments”), the terms of the solicitation, and the terms of the notice of grant award. Except for the minimum funding levels established by § 1331.4 (b)(1), in the event of conflict between a provision of the notice of grant award, any provision of the solicitation, or of any regulation enumerated in 45 CFR 75, the terms of the notice of grant award control.

(b) *Notice.* ACL provides notice to each applicant regarding ACL’s decision on an application for grant funding under § 1331.4.

(c) *Appeal.* Any applicant for a grant under this subpart has the right to appeal ACL’s determination regarding its application. Appeal procedures are governed by the regulations at 45 CFR part 16 (Procedures of the Departmental Grant Appeals Board).

[FR Doc. 2016-02055 Filed: 2/3/2016 8:45 am; Publication Date: 2/4/2016]